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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-848

WILLIAM AGOSTI,

Petitioner

v.

HARRY HUGE, PAUL R. DEAN, and C. W. DAVIS, TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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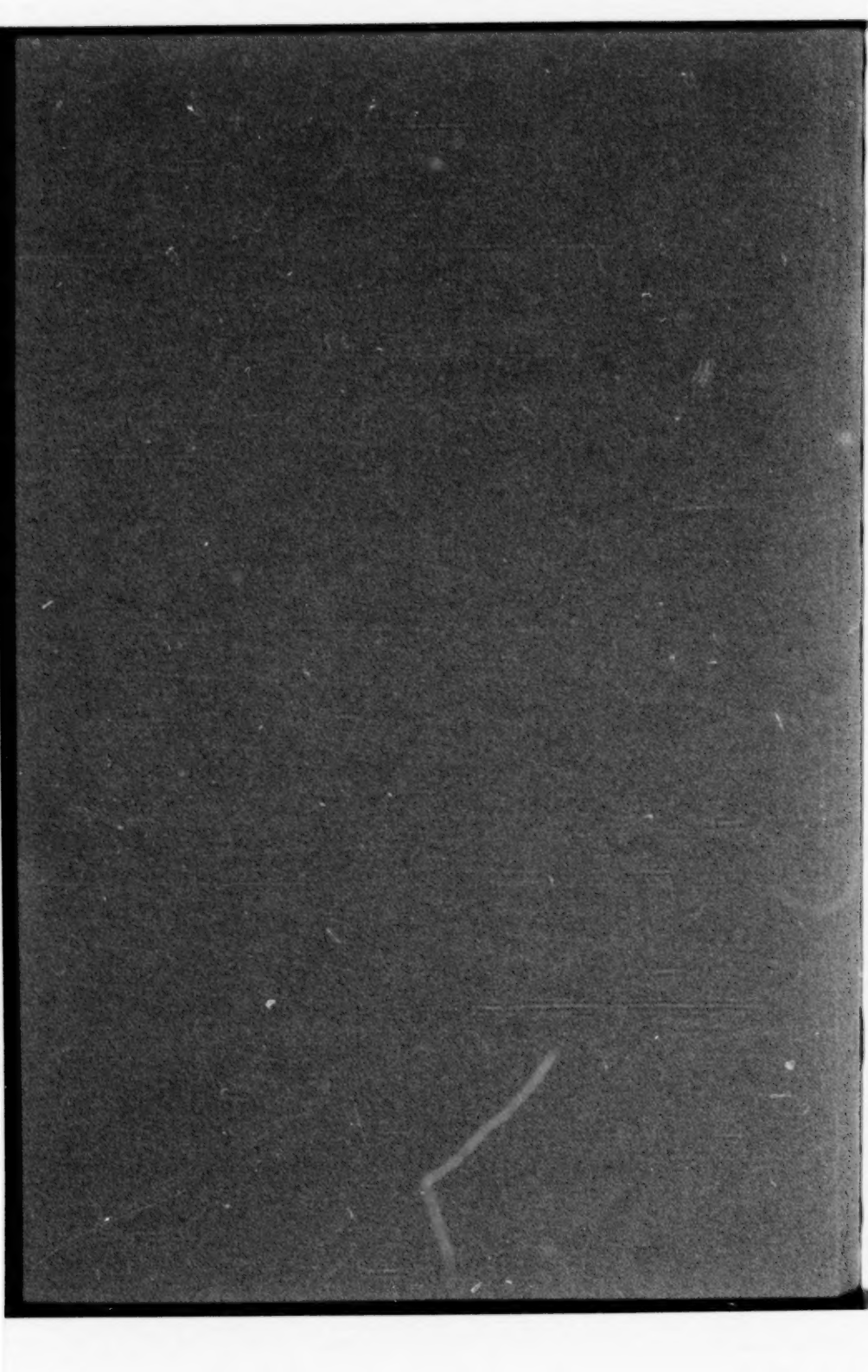

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement of the Case	3
Facts of the Case	3
Decisions Below	4
Reasons for Granting the Writ	5
Conclusion	9
Appendix A	1a
Appendix B	7a
Appendix C	9a
Appendix D	15a
Appendix E	16a

CITATIONS

CASES:

Agosti v. Huge, et al., 378 F. Supp. 1322 (1974)	4
Pete, et al. v. U.M.W.A. Welfare and Retirement Fund of 1950, et. al., 517 F.2d 1275 (1975)	6
Kiser, et al. v. Huge, et al., and U.M.W.A. Welfare and Retirement Fund of 1950, 517 F. 2d 1275 (1975)	6

STATUTES:

Labor-Management Relations Act, 1947, Sec. 302 (c)(5); 61 Stat. 157; 29 U.S.C., Sec. 186 (c)(5), Taft-Hartley Act	3
Employee Retirement Income Security Act of 1974 98 Stat. 829	8

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, William Agosti, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on September 23, 1975.

OPINION BELOW

The Court of Appeals rendered no written opinion, but its judgment affirmed an opinion of the lower court dated July 22, 1974. The judgment and opinion appear in the Appendix to this petition at pages 1a to 7a .

JURISDICTION

The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, U.S.C., Sec. 1254 (1).

QUESTIONS PRESENTED

1. Does the petitioner have vested rights to pension in the United Mine Workers of America Welfare and Retirement Fund of 1950, having worked as a coal miner for 30 years and contributed to the Pension Fund for 4½ years through payments made by his employers?

2. Should the denial of petitioner's vested rights by the respondent trustees of the Fund be adjudicated arbitrary, capricious, inequitable, and confiscatory?

3. Was it a proper administration of the trust by the trustees in passing resolutions and regulations peremptorily cutting off years of coal mine employment by petitioner as was done in his case and divest him of pension rights?

4. Was it fair and equitable for the trustees of the Pension Fund to discriminate against petitioner in demanding that he had to work 20 years in the coal mines within the 30-year period his application was filed, the trustees having waived such requirement for thousands of similar miner applicants for pension?

5. Should petitioner's vested rights to pension be denied on the sole ground that he did not apply for pension until years later after his retirement?

6. Can petitioner's vested rights to pension in 1950 be arbitrarily confiscated by respondents by requiring for the first time in 1972 a period of five years' employment in mines contributing to the Fund since May 28, 1946, instead of a lesser period?

STATUTE AND TRUST INDENTURE INVOLVED

The pension and retirement fund under which petitioner was denied pension was created pursuant to Sec. 302 (c) (5), Labor Management Relations Act, 1947, (61 Stat. 157; 29 U.S.C., Sec. 186 (c) (5); known as the Taft-Hartley Act.

The trust indenture involved here for interpretation and enforcement by this Honorable Court appears in the appendix hereto at pages 9a-14a.

STATEMENT OF THE CASE

A. Introductory

The Labor Management Relations Act, *supra,* authorizes employers to make payments to trust funds established by employers and unions for the exclusive benefit of the employees, their families, and dependents. This case involves the proper administration by respondents of one such trust fund, the United Mine Workers of America Welfare and Retirement Fund of 1950, which was established by the trust indenture contained in the National Bituminous Coal Wage Agreement of 1950.

B. Facts of This Case

Petitioner was born on March 7, 1906 and commenced work in the coal mines as a classified miner at the tender age of 14 years. He continuously worked as such from May 1920, through May 14, 1950, at the old and new Shawmut Mining Company, a period of 30 years, which respondents concede. His reason for retirement was fractured ribs sustained during said employment. In 1950 he was 40 years of age and could not file for pension at that time because he was required to be 60 years of age at time of application. In 1965

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the trustees lowered the age limit for such applicants to 55 years of age; and on April 6, 1970, he filed his application for pension. The application was denied by the Fund on June 26, 1970, on the sole ground that he had not completed 20 years of service in the mines within the 30-year period immediately preceding the date his application was filed or received at the Fund. On October 28, 1972, the respondents, or their predecessors, entirely abandoned the 20-30 year requirement; and substituted instead for the first time a requirement that an applicant for pension had to work in a mine, or mines, who paid into the Fund for a period of five years after May 28, 1946. The only further requirements were that the applicant had worked in the mines 20 years and reached age 55.

C. The Decisions Below

The District Court for the D.C. in 1974, (Augsti v. Huge, et al., 378 F. Supp. 1322) sitting as an equity court, erroneously upheld the respondents' contention that the 20-30 requirement should be enforced against the petitioner, despite the fact that in Blankenship v. Boyle, consolidated civil actions Nos. 2186-69 and 2350-69 (involving, as the court noted, between 9,000 and 20,000 retired miners and widows), the 20-30 *requirement was waived and not applied.* The District Court also erroneously held that the said 5-year contribution to the Fund, required for the first time 26 years after May 28, 1946, was applicable to petitioner, although it was not so required when he retired in 1950; nor when he filed his application for pension in 1970. His rights to a pension were struck down by the District Court by virtue of the new 1972 requirement which the court applied retroactively to petitioner. The Court further held that to hold otherwise could possibly be detrimental to the Fund itself, having not

a shred of evidence to support same. Judgment was entered accordingly as appears in Appendix hereto at page 15a. The U.S. Court of Appeals for the D.C. Circuit affirmed said judgment by its own Judgment (Appendix page 7a) on the basis of the Memorandum Opinion of the District Court, appearing in the appendix hereto at pages 1a-6a. The petitioner pointed out to the higher court that the settlement in Blankenship, *supra,* was not detrimental to the Fund itself. The unexpended balance of the Fund at end of fiscal year June 30, 1973, amounted to $83,575,429; and as of March 31, 1974, it amounted to $91,957,378.18, an increase of over eight million. During this period the bulk of the Blankenship settlement payments had been made, resulting in no detriment to the Fund as the lower court feared without any supporting facts.

REASONS FOR GRANTING THE WRIT

This is a labor test case by petitioner which affects as well the pension rights of thousands of other retired coal miners residing in Pennsylvania, West Virginia, Alabama, Kentucky, Ohio, etc., who have been denied pensions because they lacked 5 years of employment in contributory coal mines who paid into the Fund for pension rights of miners since May 28, 1946 when the Fund started. Ever since 1946 to 1972, the trust fund was administered by trustees who promulgated no requirement of such service of five years. In 1972 the respondents, or their predecessors, adopted this requirement arbitrarily in passing Resolution No. 90, effective October 28, 1972. They have capriciously without cause applied it to old coal miners, such as petitioner, applying it retroactively to 1950 against miners who retired prior to 1972.

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Petitioner submits that neither the Labor Management Relations Act, 1947; the Trust Indenture contained in the National Bituminous Coal Wage Agreement of 1950; nor subsequent coal wage agreements; nor any resolutions or regulations of the trustees from 1950 to 1972 authorize or require 5 years of payments to the Fund. This unwarranted requirement in 1972 was not a proper exercise of the trustees' discretion and the lower federal courts in the District of Columbia held it proper and equitable.

To emphasize the conflict of decisions in the D.C. Circuit on the said 5-year requirement, we call this Honorable Court's attention to the strong dissenting opinion by Judge Tamm, joined in by Judge Wilkey, in the class actions of Pete, et al v. United Mine Workers of America Welfare and Retirement Fund of 1950, et al., No. 73-1270, reported in 517 Fed. 2nd at 1275; and Kiser, et al. v. Huge, et al. and United Mine Workers of America Welfare and Retirement Fund of 1950, No. 73-1393, reported in 517 Fed. 2d at 1275 consolidated appeals, decided en banc by the U.S. Court of Appeals for the D.C. Circuit on February 12, 1975.

We quote the following pertinent abstracts from the dissenting opinion:

> * * * "However, I strongly dissent from Part II of the majority opinion which limits relief to members of the plaintiff classes with at least five years of signatory service. * * *. The majority's conclusions is certainly not dictated by the precedents it relies upon, nor does it represent anything more than the promulgation of retroactive eligibility requirements for a private trust by a federal appellate court. * * *. To bolster this holding the majority places reliance upon the decision in Roark II, Judge Gesell's analysis of the Blankenship

> settlement and the Taft-Hartley Act itself as all pointing to the establishment of a five-year requirement. Under closer scrutiny, none of these provide a foundation for what is in reality the appellate imposition of such a retroactive criterion, *Res Judicata facit de albo nigrum et de quadrato rotundum.* * * *. * * * Throughout its opinion, the majority 'speaks of fulfilling the spirit of the Taft-Hartley proviso'. That provision, Sec. 302 (c) (5) of the Taft-Hartley Act, 29 U.S.C. S.186 (1970), authorizes the establishment of funds for the 'benefit of employees.' Section 302 (c) (5) contains no reference to a five-year service eligibility standard for trusts authorized under it. There is nothing in the legislative history which remotely suggests such a mandatory requirement. In fact the only fair reading of the relevant legislative history is that Congress intended the development of eligibility criteria to remain exclusively within the province of labor-management relations. Finally, there clearly is no statutory authority for the proposition that when the Trustees establish the contributory employment standard below the level where some members of this court might set it, this court can impose its own standard. * * * Stripped to its simplest form, the majority, while proclaiming that the Trustees' present proposal is not arbitrary or unreasonable, is in reality simply legislating by judicial fiat a five-year contributory employment requirement." * * *

Another reason for granting the writ is that the U.S. Court of Appeals at argument of petitioner's case refused to grant petitioner pension on a pro-rated basis; or fractional basis. Petitioner is equitably entitled to 90% of the $200 a month now paid by respondents in the event the 5-year contributory employment requirement is found equitable and legal by this Honorable Court. This would be based, in part, upon his 30

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years' employment in the coal industry and the number of years his employers paid into the Fund for petitioner's pension. Such a pro-rata is now required by the Employee Retirement Income Security Act of 1974, dated Sept. 2, 1974, 88 Stat. 829. The main requirements of this new piece of pension legislation are that the employees' equitable rights be recognized and enforced on a pro-rata and fractional basis predicated on years of employment; payments into pension trusts; age; etc. This new act gives vested rights to pension in favor of employees with only 10 years of employment. Here, the petitioner had 30 years of service but the lower courts held he had no vested rights to pension and forfeited the moneys he had already paid in through his employers.

This new pension law applies to old pension plans such as the one in the case at bar. This action of the lower courts impaired the obligations of petitioner's contract with the coal operators; the U.M.W.A. Union; and his membership therein.

Still another valid and urgent reason for granting the writ is that the U.S. Court of Appeals denied petitioner's motion to require respondents to file, as of September 1, 1975, in this case an uptodate financial report of the condition of the Fund; the last such report having been published as of March 31, 1974. In the administration of trusts, the trustees are equitably required to disclose to beneficiaries of the trust the amount of the unexpended corpus on hand; the obvious reason being the ability of the trust to make payments to beneficiaries, such as pensions to those who contributed. The lower court peremptorily refused such disclosure. This right of petitioner to a full and present accounting was denied petitioner without any reasons assigned

for the refusal. The order of the Court denying same appears in the Appendix at p. 16a.

CONCLUSION

This Honorable Court has not heretofore ruled on the vital questions presented herein to petitioner's knowledge; and as it also affects the equitable rights of thousands of other coal miners similarly situated, the petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2042-73

WILLIAM AGOSTI,

Plaintiff,

v.

HARRY HUGE, PAUL R. DEAN and C. W. DAVIS, Trustees, United Mine Workers of America Welfare and Retirement Fund of 1950,

Defendants.

Memorandum Opinion

APPEARANCES:

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This matter came before the court on the motion of plaintiff William Agosti for summary judgment. Plaintiff alleges that the defendants, Trustees of the United Mine Workers of America Welfare and Retirement Fund, have acted arbitrarily and capriciously in denying him a pension to which he is entitled. Plaintiff seeks a declaratory judgment as to his eligibility.

Plaintiff contends in his complaint that when he retired on May 14, 1950, at the age of 44, he qualified for benefits under Trustees' Resolution 10, then in force, in all respects except age. He did not, however, file for benefits until approximately 20 years later, in February, 1970. At that time Trustees' Resolution 63 governed eligibility for pension benefits and required that an applicant have worked 20 out of the 30 years (20/30 requirement) immediately preceding his retirement in the coal industry. This 20/30 requirement had been in effect since 1953, three years after the plaintiff's retirement and plaintiff's pension file indicates that his application was denied in 1970 because he failed to meet it. Plaintiff does not contest defendants' claim that after May, 1960, at which time plaintiff was 54 years old and hence too young to apply for pension benefits, he could not meet the 20 out of 30 requirement without further service in the coal industry. Nor does plaintiff controvert defendants' statement that at no time did plaintiff qualify for a pension under regulations of the Fund then in force.

Thus, plaintiff's sole claim appears to be that the 20/30 requirement in force from 1953 to 1972 was the result of arbitrary and capricious conduct on the part of the Trustees. Plaintiff alleges that this arbitrary and capricious conduct unlawfully deprived him of rights in the pension fund. However, the regulation which the plaintiff attacks has been examined a number of times and its validity sustained. The Court of Appeals for this Circuit has specifically acknowledged the authority of the Trustees to revise pension eligibility requirements and noted that flexibility of this kind seems especially necessary for the operation of the Fund. *Gaydosh* v. *Lewis,* 410 F.2d 262, 265 (D. C. Cir. 1969); *Kosty* v. *Lewis,* 319 F.2d 744, 748-749 (D.C. Cir. 1963). Moreover, the court in *Lavella* v. *Boyle,* 444 F.2d 910 (D.C. Cir. 1971) examined the 20/30 requirement and specifically stated that while it viewed the application

of the rule in that case as unreasonable, it found no fault with the eligibility requirement itself. In that case the plaintiff, Lavella, like Agosti, met all the requirements except age when he retired due to lung disease. Prior to Lavella's attaining age 60 and thus becoming fully entitled to a pension, the 20/30 requirement was instituted by the Trustees. The court in *Lavella* held that a miner who completed 20 years service prior to the promulgation of the 20/30 requirement, and who retired due to a permanent occupationally-related disability had sufficiently vested rights which could not be cut off by a subsequent change in requirements. Therefore, the Trustees' actions were held arbitrary and capricious only in the specific application of the regulation to Lavella. The plaintiff here, however, does not meet the standard laid down in *Lavella* since he claims no permanent disability and admits in his reply of May 6, 1974 that the matter of permanent disability is not at issue.

The present case appears instead to be controlled by *Assalone* v. *Carey*, 473 F.2d 199 (D.C. Cir. 1972) and *Gaydosh* v. *Lewis*, 410 F.2d 262 (D.C. Cir. 1969) In both of those cases the miners met all the requirements then in effect except age when they retired from the coal industry. Before either plaintiff attained the requisite age of 60, the eligibility requirements were changed and neither was able to qualify for a pension upon application.[1] The court refused recovery since, unlike the claimant in *Kosty* v. *Lewis*, 319 F.2d 744 (D.C. Cir. 1963), neither met all of the requirements of Resolution 10, including age, at the time the Resolution was changed. *See Assalone, supra,* at 204; *Gaydosh, supra,* at 266. Moreover, it should be noted that neither suffered from a permanent occupational disability

[1] Assalone did not meet the 20/30 requirement, and Gaydosh did not meet either the 20/30 requirement or an additional requirement that the claimant have been regularly employed in the coal industry immediately prior to May 29, 1946.

that prevented him from meeting the existing qualifications as was the case in *Lavella.*

The court in *Gaydosh* held that since the claimant's rights had not fully matured in all respects prior to the alteration of the eligibility requirements, the conduct of the Trustees in changing the requirements was not arbitrary or capricious as to Gaydosh. The court stated:

> Equity will estop the trustees from procedural gerrymandering in an effort to preclude applicants whose rights have *fully* matured under existing criteria by abruptly switching eligibility signposts without notice. On the other hand, equity will not interfere with reasonable applications of the trustees' discretion under the Trust Indenture. The function of the trustees, on the very face of the indenture, is to preserve the vitality of the fund and to effectively apply its worth to the benefit of as many intended employees as is economically possible. We will not, in the absences of vagarious conduct, disrupt this function, and we can discern no impropriety in that regard with respect to the situation before us. *Gaydosh, supra,* at 266.

The soundness of this conclusion is emphasized by the court's examination in *Gaydosh* of the rationale for the age requirement. As the court points out, a minimum age limitation is not a purely arbitrary requirement but is prompted by the debilitating effect of premature retirements on the Fund. As the court stated:

> Economic reality requires a reasonable cut-off date as to age lest the fund be exhausted by comparatively premature retirement. Pragmatically speaking, when a miner retires at the age of fifty-six and seeks to await the tolling of four years before filing for a pension, those years are productively carried by the sweat of the other miners. *Gaydosh, supra,* at 265.

Thus, it is not unreasonable to hold that a miner's rights are not fully matured unless he has met the age requirement and to permit those unmatured rights to be adversely affected by reasonable eligibility changes by the Trustees, unless special equitable considerations are present. Not only may the Trustees make such reasonable changes, if it is necessary to protect the integrity of the Fund, it is their duty to do so. Therefore, this court does not find that the 20/30 requirement is arbitrary *per se,* or that it has been arbitrarily and capriciously applied in the present case.

One further factor enters into this court's decision. In 1972, pursuant to a settlement between parties in *Blankenship* v. *Boyle,* consolidated Civil Action Nos. 2186-69 and 2350-69, the Trustees of the Fund established by Resolution 90 the requirements currently in effect. Agosti, who opted out of the class in order not to be bound by the settlement, does not meet the requirements of Resolution 90.[2] The class in that settlement represented between 9,000 and 20,000 retired miners and widows, and was vigorously prosecuted by the plaintiffs. Notice of the proposed settlement and eligibility requirements was published in over 60 newspapers and the Fund received 60,000 communications with respect thereto. The court in *Blankenship* found the provisions of the settlement were fair and equitable in light of the equities and the financial position of the Fund and that Resolution 90 was a reasonable exercise of the Trustees' discretion. Therefore, this court is of the opinion not only that the 20/30 requirement is not arbitrary and capricious but also that to hold otherwise might upset the balance struck by the opposing

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[2] Plaintiff, in his pleading of May 6, 1974 in support of his motion, accepts defendants' allegation that plaintiff worked only 4½ years for a signatory coal operator. Thus, plaintiff clearly does not qualify under Resolution 90 which requires 5 years of such service.

interests in *Blankenship* and could possibly be detrimental to the Fund itself.

Plaintiff, therefore, is not entitled to a summary judgment. While defendants have not moved for summary judgment, in the instant case there is no dispute as to any material fact. Had defendants made an appropriate motion they would be entitled to summary judgment. Under the circumstances, such a motion is not necessary. *Local 453, International Union of Electrical, Radio & Machine Workers* v. *Otis Elevator Co.*, 314 F.2d 25 (2d Cir. 1963). *See J. Moore, Federal Practice,* Section 56.12 pp. 2241-43 (2d ed. 1974). An appropriate judgment accompanies this Memorandum Opinion.

THOMAS A. FLANNERY
UNITED STATES DISTRICT JUDGE

July 22, 1974

APPENDIX B

[Filed September 23, 1975]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1975

Civil 2042-73

No. 74-1910

William Agosti, *Appellant*

v.

Harry Huge, et al

Hugh E. Kline
CLERK

Appeal from the United States District Court for the District of Columbia

Before: Leventhal and Wilkey, Circuit Judges and Solomon,* Senior United States District Judge for the District of Oregon

Judgment

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c).

On consideration of the foregoing. It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby affirmed on the

* Sitting by designation pursuant to 28 U.S.C. § 294(d).

basis of the memorandum opinion of the District Court, (Thomas A. Flannery, District Judge).

Per Curiam
For the Court
HUGH E. KLINE
Hugh E. Kline
Clerk

APPENDIX C

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950
EFFECTIVE MARCH 5, 1950, TO JUNE 30, 1952
EXECUTED AT WASHINGTON, D. C., MARCH 5, 1950

• • • • • • • • • •

UNITED MINE WORKERS OF AMERICA
WELFARE AND RETIREMENT FUND OF 1950

A. It is hereby stipulated and agreed by the contracting parties hereto that there is hereby created a Fund to be designated and known as the "United Mine Workers of America Welfare and Retirement Fund of 1950." During the life of this Agreement, there shall be paid into such Fund by each operator signatory hereto the sum of thirty cents (30c) per ton of two thousand (2,000) pounds on each ton of coal produced for use or for sale. Such Fund shall have its place of business in Washington, District of Columbia, and it shall be operated by a Board of Trustees, one of whom shall be appointed as a representative of the Employers, one of whom shall be appointed as a representative of the United Mine Workers of America and one of whom shall be a neutral party, selected by the other two. In the event of resignation, death, inability or unwillingness to serve of the Trustee appointed by the Operators or the Trustee appointed by the United Mine Workers of America, the Operators shall appoint the successor of the Trustee originally appointed by them and the United Mine Workers of America shall appoint the successor of the Trustee originally appointed by it.

The Operators signatory hereto do hereby appoint Charles A. Owen, of New York City, as their representative on said Board of Trustees. The United Mine Workers of America do hereby appoint John L. Lewis, of Washington, D.C., as its representative on said Board of Trustees. It is further stipulated and agreed by the joint contracting parties that Josephine Roche, of Denver, Colorado is appointed as the neutral Trustee. Said three Trustees

so named and designated shall constitute the Board of Trustees to administer the Fund herein created.

In the event of a deadlock on the designation or agreement as to any future neutral Trustee, an impartial umpire shall be selected either by agreement of the two Trustees, representatives of the contracting parties hereto, or by petition by either of the contracting parties hereto to the United States District Court for the District of Columbia for the appointment of such an impartial umpire, all as made and provided in Section 302(c) of the "Labor-Management Relations Act, 1947."

It is agreed by the contracting parties hereto that the Trustees herein provided for shall serve for the duration of this contract and as long thereafter as the proper continuation and administration of said trust shall require.

It is agreed that this Fund is an irrevocable trust created pursuant to Section 302(c) of the "Labor-Management Relations Act, 1947," and shall endure as long as the purposes for its creation shall exist. Said purposes shall be to make payments from principal or income or both, of (1) benefits to employees of said Operators, their families and dependents for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance or accident insurance, (2) benefits with respect to wage loss not otherwise compensated for at all or adequately by tax supported agencies created by federal or State law; (3) benefits on account of sickness, temporary disability, permanent disability, death or retirement; (4) benefits for any and all other purposes which may be specified, provided for or permitted in Section 302(c) of the "Labor-Management Relations Act, 1947," as agreed upon from time to time by the Trustees including the making of any or all of the foregoing benefits applicable to the individual members of the

United Mine Workers of America and their families and dependents, and to employees of the Operators other than those exempted from this Agreement; and (5) benefits for all other related welfare purposes as may be determined by the Trustees within the scope of the provisions of the aforesaid "Labor-Management Relations Act, 1947." Subject to the stated purposes of this Fund, the Trustees shall have full authority, within the terms and provisions of the "Labor-Management Relations Act, 1947," and other applicable law, with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providiing or arranging for provisions for benefits, investment of trust funds, and all other related matters.

The aforesaid Trustees shall designate a portion (which may be changed from time to time) of the payments herein provided, based upon proper actuarial computations, as a separate fund to be administered by the said Trustees herein described and to be used for providing for pensions or annuities for the members of the United Mine Workers of America or their families or dependents and such other persons as may be properly included as beneficiaries thereunder.

It is further agreed that the detailed basis upon which payments from the Fund will be made shall be resolved in writing by the aforesaid Trustees at their initial meeting, or at the earliest practicable date that may be them thereafter be agreed upon.

Title to all the moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust and that no benefits or moneys payable from this Fund shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, as-

sign, pledge, encumber or charge the same shall be void. The moneys to be paid into said Fund shall not constitute or be deemed wages due to the individual mine worker, nor shall said moneys in any manner be liable for or subject to the debts, contracts, liabilities or torts of the parties entitled to such money, i.e., the beneficiaries of said Trust under the terms of this Agreement.

The obligation to make payments to the "United Mine Workers of America Welfare and Retirement Fund of 1950" under this contract shall become effective on March 6, 1950, and the first actual payments are to be made on April 10, 1950, and thereafter continuously on the 10th day of each succeeding calendar month covering the production of all coal for use or sale during the proceding month.

It is stipulated and agreed by the contracting parties hereto that the Trustee designated by the United Mine Workers of America shall be the Chairman of the Trustees of the Fund provided for in this Agreement.

It shall be the duty of the Operators signatory hereto, and each of them, to keep said payments due said Fund, as hereinabove described and provided for, current and to furnish to the United Mine Workers of America and to the Trustees hereinabove designated a monthly statement showing the full amount due hereunder for all coal produced for use or for sale from each of the several individual mines owned or operated by the said Operators signatory hereto. Payments to said Fund shall be made by check payable to "United Mine Workers of America Welfare and Retirement Fund of 1950" and shall be delivered or mailed to the office of said Fund located at 907 Fifteenth Street, N.W., Washington, D.C., or as otherwise designated by the Trustees.

It is stipulated and agreed by the contracting parties hereto that an annual audit of the Fund hereinabove described shall be made by competent authorities to be

designated by the Trustees of said Fund. A statement of the results of such audit shall be made available for inspection of interested persons at the principal office of the Trust Fund and at such other places as may be designated by the Trustees.

Failure of any Operator signatory hereto to make full and prompt payments to the "United Mine Workers of America Welfare and Retirement Fund of 1950" in the manner and on the dates herein provided shall, at the option of the United Mine Workers of America, be deemed a violation of this Agreement. This obligation of each Operator signatory hereto, which is several and not joint, to so pay such sums shall be a direct and continuing obligation of said Operator during the life of this Agreement and it shall be deemed a violation of this Agreement if any mine to which this Agreement is applicable shall be sold, leased, sub-leased, assigned, or otherwise disposed of for the purpose of avoiding the obligation hereunder.

Action which may be required hereunder by the Operators for the appointment of a successor Trustee representing them, or which may be required in connection with any other matter hereunder, may be taken by those Operators who at the time are parties hereto, and authorization, approval, or ratification of Operators representing fifty-one percent (51%) or more of the coal produced for use or sale during the calendar year previous to that in which the action is taken shall be sufficient and shall bind all Operators.

B. It is hereby stipulated and agreed by the contracting parties with respect to the Fund created by the National Bituminous Coal Wage Agreement of 1947:

(1) The Operators signatory hereto agree to make payments into said Fund on or before March 15, 1950, on account of all coal produced for use or sale up to and including March 6, 1950, with respect to

which payment has not heretofore been made, such payments to be on the basis heretofore made by said Operators under the National Bituminous Coal Wage Agreement of 1947 and the National Bituminous Coal Wage Agreement of 1948, whichever is applicable.

(2) The Operators signatory hereto hereby renounce and forever release any and all claim to or interest in payments made into the said 1947 fund.

(3) The Trustees appointed pursuant to this Agreement are hereby authorized and directed to accept into the new trust fund hereby created and to devote for the purposes hereinabove specified and enumerated, any and all trust funds remaining unexpended or unobligated in said 1947 trust fund.

(4)The parties hereto agree that the best interest of the beneficiaries of said trust fund would be served by having all unexpended or unobligated funds therein transferred as above provided, and agree that the Trustees thereof should transfer such funds to the new trust fund created by this Agreement.

C. It is stipulated, understood and agreed by the contracting parties hereto that the present practices with respect to wage deductions and their use for provision of medical, hospital and related services shall continue during the terms of this contract or until such earlier date or dates as may be agreed upon by the United Mine Workers of America and any Operator signatory hereto.

D. It is the intent and purpose of the contracting parties hereto that full cooperation shall by each of them be given to each other, the Trustees named under this Section and to all affected Mine Workers to the eventual coordination and development of policies and working agreements necessary or advisable for the effective operation of this Fund.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2042-73

WILLIAM AGOSTI, *Plaintiff*

v.

HARRY HUGE, et al., *Defendants.*

Judgment

This matter came before the court on plaintiff's motion for summary judgment. The court having considered the pleadings, motions, affidavits, exhibits and memoranda submitted by the parties, and having found that there is no genuine issue as to any material fact, and having concluded that the defendants are entitled to judgment as a matter of law, and for the reasons stated in the memorandum opinion in this case, it is this 22nd day of July, 1974,

ORDERED that plaintiff's motion for summary judgment be, and the same hereby is, denied; and it is further

ORDERED AND ADJUDGED that judgment be, and the same hereby is, entered for defendants.

THOMAS A. FLANNERY
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1975

No. 74-1910

Civil Action No. 2042-73

WILLIAM AGOSTI, *Appellant*

v.

HARRY HUGE, ET AL.

Before: LEVENTHAL and WILKEY, Circuit Judges and *SOLOMON, United States Senior District Judge for the District of Oregon.

Order

On consideration of appellant's motion to require appellees to file reports disclosing the financial conditions of the 1950 and 1974 benefit and pension trusts as of September 1, 1975, and of the opposition thereto, it is

ORDERED by the Court that appellant's aforesaid motion is denied.

Per Curiam

For the Court:

HUGH E. KLINE, Clerk

By: (Signed) ROBERT A. BONNER
Robert A. Bonner
Chief Deputy Clerk

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* Sitting by designation pursuant to Title 28 U.S.C. § 294(d).